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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,352	09/11/2003	Randy J. Pieper	23357.00	5548

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EXAMINER

WATSON, ROBERT C

ART UNIT PAPER NUMBER

3723

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

①

<b>Office Action Summary</b>	<b>Application No.</b> 10/659,352	<b>Applicant(s)</b> PIEPER, RANDY J.	
	<b>Examiner</b> Robert C. Watson	<b>Art Unit</b> 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Due to the finding of new art pertinent to the merits of this case the indication of allowability set forth in the personal interview of 4/1/05 is hereby withdrawn. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ackerman in view of McCormick.

Ackerman shows a pry bar having an elongate arcuate lever. The forward end has a centrally located bifurcated claw having a notch that is capable of receiving a fastener. A gripping member is disposed entirely within the rear section of the lever.

McCormick shows that a handle may be constructed from a horizontally disposed handle member with a vertical support members depending from each of the opposite ends of the handle member.

To employ in Ackerman a gripping member comprised of a horizontally disposed handle member with a vertical support members depending from each of the opposite ends of the handle member would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of McCormick. One of ordinary skill in the art would have been motivated to do this in order to simplify the manufacture of the gripping member. Regarding claim 3, Ackerman shows that the gripping member may be attached to the top surface of the lever by a welding process.

Claims 4, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ackerman in view of Chamberlayne.

Ackerman discloses that the tool is manufactured from "metallic strip material".

Chamberlayne teaches the a tool may be manufactured from "recycled materials" (see Chamberlayne, column 20, line 36).

The process used to manufacture the tool per se is immaterial insofar as the completed tool is concerned. The instant claims are directed to a tool per se and not the method of manufacture of a tool, as such, any recitations as to process of manufacture in the claim directed to the tool per se have no patentable significance. However, in any case, to manufacture the Ackerman tool from recycled materials would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Chamberlayne. One of ordinary skill in the art would have been motivated to do this in order to reduce the expense of manufacture and to provide a more ecological manufacturing process. The source of the material to be used in the recycle process is no more than an obvious matter of design choice absent a showing of criticality for this feature.

Applicant's remarks have been given careful consideration. However, applicant's remarks are now believed to be moot since the newly applied references show all of the newly claimed features.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 703 308-1747. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 703 308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rcw

A handwritten signature in black ink, appearing to read "Robert C. Watson", with a stylized, flowing script.

**ROBERT C. WATSON  
PRIMARY EXAMINER**